

The reality of Guantanamo

BY SARDAR QASIM AHMAD ALI

H. Rights Nation 06-07-05

The US breaches no fewer than 15 articles of the third Geneva Convention.

George W. Bush's five-year term as Governor of Texas saw 152 executions in that State, including numerous cases which violated international law or safeguards, including child offenders, the mentally impaired, the inadequately represented and those whose guilt was in doubt. President Bush's first term in the White House saw the first federal execution in the USA since 1963.

At the heart of any happy civilised society lie certain fundamental principles like humanity, fairness, wisdom, equality and above all reasonableness. Three thousand years ago Plato argued that the onus to follow principles lies primarily on the rulers so that good precedents are set. By implication it follows that the dominant must not be unfair to the subservient. Today, the dominant is being imprudently unfair, gloating about on its military might brutally crushing the weak.

King Arthur of Camelot possessed the aforementioned qualities, therefore, he is remembered as a hero, but Hitler did not and it is no surprise that history has judged him as devil. President Bush has caused much bloodshed around the world and still claims to be the champion of human rights, rule of law and all the good. The atrocities being committed at Guantanamo Bay are well known, however, ironically, the administration continues to portray otherwise.

General Richard Myers has recently stated that the prison is a 'model facility'. Similarly all the top ranking US officials are cajoling the world into believing that no abuse of human rights has taken place.

Some pro neoconservative legal experts have gone a step further and argued that the war on terror is an exception to the Geneva Conventions (1950). Thus, advocating that laws applicable to POWs in relation to war on terrorism are over and above the laws of war and that suspects can be detained incommunicado without due process.

Major human rights groups have also unanimously declared the US treatment of the detainees as 'illegal, inhuman and an extreme act of cruelty'. It is an anomaly that to date, none of the detainees has been criminally charged. In this perspective, the fundamental question that arises is whether the indefinite detention, as the administration sometimes calls it, of the captives without access to legal representation and any prospect of fair trial is fair, just and reasonable?

As a student of law, my answer is No. It is with impunity that one can claim that no matter whatever the administration's justifications and whatsoever the theories advanced by the legal experts, no one can discard the laws of nature which, inter alia, provide the rational upon which developed fundamental laws like, presumption of innocence until proven guilty. The way I see it, today the US is challenging the validity of these fundamental laws in the global or international setting. Donald Rumsfeld tried justifying by arguing that under the Geneva Convention captured combatants may be detained till the end of hostilities. Hostilities in this context means occurring armed conflict between the combating enemy soldiers, who must be kept at bay for the duration of the conflict.

First of all the war in Afghanistan and Iraq is over, therefore, a situation does not exist where combating enemy soldiers are a threat to the victor allied forces. All that is left are some guerilla fighters who like

patriots want to free their motherland and in case these are captured protection is to be provided to them under the humanitarian laws. Insofar Al Qaeda, it is not tangible and does not merit the status of a regime, therefore, preventive or administrative detention of suspected Al Qaeda members or its allies without credible evidence for an infinite time without trial and subjecting them to inhumane treatment is akin to disregarding international humanitarian laws.

The US breaches no fewer than 15 articles of the third Convention. Article 13 was violated by displaying the prisoners on television when on US soil. Article 18 was breached after they were stripped of their own clothes and deprived of their possessions. They were then interned in a penitentiary (against article 22), where they were denied proper mess facilities (26), canteens (28), religious premises (34), opportunities for physical exercise (38), access to the text of the convention (41), freedom to write to their families (70 and 71) and parcels of food and books (72).

Furthermore, they were not released and repatriated without delay after the cessation of active hostilities (118), since, the US authorities hypothetically assume, their interrogation might, one day, reveal information about Al Qaeda. Article 17 rules that captives are obliged to give only their name, rank, number and date of birth. No "coercion" may be inflicted to "secure information of any kind whatever". Shamelessly, they have been confined to solitary cells and subjected to what is now known as "torture lite": sleep deprivation and constant exposure to bright light. Unsurprisingly, several of the prisoners have sought to commit suicide, by smashing their heads against the walls or trying to slash their wrists with plastic cutlery.

The administration claims that these detainees are not subject to the Geneva Conventions, as they are not POWs, but "unlawful combatants". The same claim could be made, with rather more justice, by the Iraqis holding the US soldiers who illegally invaded their country. But this redefinition is itself a flagrant breach of article 4 of the third convention, under which people detained as suspected members of a militia (the Taliban) or a volunteer corps (Al Qaeda) must be regarded as POWs. In case of doubt about how such detainees should be classified, article 5 clarifies that they "shall enjoy the protection of the present convention until such time as their status has been determined by a competent tribunal".

Interestingly, the American Courts seem rather perplexed in dispensing justice. In a diametrically different judgement in *Rasul v. Bush*, decided 28 June 2004, the SC ruled, that the federal courts in fact do have jurisdiction to hear appeals from foreign nationals detained in Guantánamo Bay, however, till today the order has not been obeyed. The background is stun-

Guantanamo Bay

ning: In 2001 the US justice department advised the Pentagon that the US Naval Base in Guantánamo Bay, Cuba, has "ultimate sovereignty" over Guantánamo, therefore, any detainee therein would not have access to the US courts. The first "war on terror" detainees were transferred to the base two weeks later.

"At a minimum, the government has conceded that the war could last several generations, thereby making it possible, if not likely, that 'enemy combatants' will be subject to terms of life imprisonment at Guantánamo Bay. Short of the death penalty, life imprisonment is the ultimate deprivation of liberty, and the uncertainty of whether the war on terror – and thus the period of incarceration – will last a lifetime may be even worse than if the detainees had been tried, convicted, and definitively sentenced to a fixed term."

Past decades are replete with examples offering proof of American superiority in the League of Nations, but in chorus, overwhelming evidence of being an exception to the rule of law is appalling. For example, America sided with the Allied Forces in conducting the Nuremberg and Tokyo trials under the legal veneer of Tribunals and paved the way for retribution in the name of International law. But, startling is the fact that no Tribunal or International Law provision was invoked against the bombings of Dresden, Hiroshima and Nagasaki, by the Allied Forces.

Similarly, the treaty to establish International Criminal Court, which sought to globalise the jurisdiction and enforceability of international criminal law, was opposed by US, since it was not satisfied that the treaty gave the US power to dominate the court or protected American immunity from prosecution for crimes covered by the ICC statute, hence, US voted against the treaty. In 2000, Bush removed the US signature from the ICC treaty and eventually in July 2002, Congress passed, the American Service Members Protection Act, prohibiting any American cooperation with the ICC, and authorising the executive to order the use of force to "free" any American citizen or resident who might be taken into ICC custody. This law has been mocked by critics as the "Hague Invasion Act."

The immediate effect of American transgressions and atrocities is that today an ordinary American citizen has become the untouchable, however, the long term effect seems to be that America would completely lose its moral authority and harness more enemies across the globe. The American strategy on the war on terror is flawed since brutal, inhumane treatment of the poor and weak and violation of international laws at the whim of one individual is not the answer.

America will be well advised if it only understands the logic embodied in the following words: Conformity with international human rights is not a weakness in the fight against terrorism but a weapon, ensuring the widest international support for actions and avoiding situations which could provoke misplaced sympathy for terrorists or their causes... [The Assembly considers that the US government has betrayed its own highest principles in the zeal with which it has attempted to pursue the "war on terror". These errors have perhaps been most manifest in relation to Guantánamo Bay.]